

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALLEN S. MEREDITH,

Plaintiff,

v.

R. FLORES,

Defendants.

3:13-cv-00654-RCJ-WGC

ORDER

Re: ECF No. 28

Plaintiff originally filed his application to proceed in forma pauperis and pro se complaint pursuant to 42 U.S.C. § 1983 on November 22, 2013. (ECF Nos. 1, 1-1.) The complaint was screened and Plaintiff was allowed to proceed with his Eighth Amendment failure to protect claim in Count I and Eighth Amendment excessive force claim in Count II, and the action was stayed while the parties engaged in mediation. (ECF No. 8.) When settlement efforts were unsuccessful, the complaint was filed on August 26, 2014. (ECF No. 16.) Plaintiff filed an amended complaint the following day. (ECF No. 17.) Defendant Randy Flores filed a motion requesting that the court screen the amended complaint. (ECF No. 24.) The court denied the motion and ordered defendant Flores to answer or otherwise respond to the complaint within twenty-one days. (ECF No. 25.) Defendant Flores filed his answer on November 17, 2014. (ECF No. 26.) Plaintiff filed a notice of change of address on December 18, 2014, indicating he had been transferred from Ely State Prison (ESP) to High Desert State Prison (HDSP). (ECF No. 27.)

On April 1, 2015, defendant Flores filed a motion to dismiss. (ECF No. 28.) The motion was served on Plaintiff at ESP, even though he had filed a change of address indicating he had been moved to HDSP. (*See* ECF No. 28 at 5.) The court issued its *Klingele* order on April 2, 2015, which was sent to Plaintiff at his address at HDSP, consistent with his most recent notice of change of address. (*See* ECF No. 30 at 1.) The *Klingele* order was returned as undeliverable indicating that the inmate was not at HDSP. (*Id.*)

1 The court conducted an inmate search on NDOC's website,
2 <http://167.154.2.76/inmatesearch/form.php>, and as of November 4, 2015, NDOC indicates that
3 Plaintiff has been released.

4 It appears Plaintiff was not served with Defendants' motion to dismiss; therefore,
5 defendant Flores' motion to dismiss (ECF No. 28) is **DENIED WITHOUT PREJUDICE**.
6 Defendant Flores has **TEN DAYS** from the date of this Order to file a notice with the court
7 indicating whether NDOC has an updated address for Plaintiff, and if so whether it intends to
8 renew and serve its motion on Plaintiff at such address. In the event defendant Flores advises the
9 court that Plaintiff has not provided NDOC with an updated address following his release, the
10 court will issue a report and recommendation for dismissal of this action pursuant to Local Rule
11 of Special Proceedings and Appeals (LSR) 2-2.

12 **IT IS SO ORDERED.**

13 DATED: November 4, 2015.

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WILLIAM G. COBB
16 UNITED STATES MAGISTRATE JUDGE
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